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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303, 305, 307, and 309

RIN 0970-AC75

Child Support

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule; technical corrections.

SUMMARY: This rule is intended to eliminate regulations that are outdated or unnecessary and to make technical amendments to the Flexibility, Efficiency, and Modernization in Child Support Enforcement (FEM) final rule, published on December 20, 2016, including to amend the compliance date for review and adjustment of child support orders. The Office of Child Support Enforcement is also making conforming amendments to the regulations as a result of the Bipartisan Budget Act of 2018.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The compliance dates, or the dates that States must comply with the final rule, differ among the various sections of the Federal regulations. The reasons for delaying compliance dates include State legislative changes, system modifications, procedural updates, etc.

For more information on compliance dates, see SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: The OCSE Division of Policy and Training at OCSE.DPT@acf.hhs.gov. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Compliance Dates

The compliance date, or the date by which the States must follow the rule, will be [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] except, as noted below:

- *Review and adjustment of child support orders* [45 CFR 303.8(b)(7)(ii)]: For those States that consider incarceration to be voluntary unemployment, this final rule will delay the compliance date for sending notices [45 CFR 303.8(b)(7)(ii)] to 1 year after completion of the first quadrennial review of the State's guidelines that commences on or after December 21, 2017.
- *Annual collection fee for individuals not receiving title IV-A assistance* [45 CFR 302.33(e)]: The compliance date is October 1, 2018 unless the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required for a State to meet the requirements in section 454(6)(B)(ii) of the Social Security Act [42 U.S.C. 654(6)(B)(ii)]. In such a case, the State shall not be regarded as failing to meet such requirements before the first day of the first calendar quarter beginning after the first regular session of the State legislature that begins after February 9, 2018. For the purposes of determining this

date, for States with a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

- *Quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires* [45 CFR 303.108(c)]: The compliance date for reporting quarterly wage information is 1 year after the publication of the final rule. However, if State law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].
- *Functional requirements for computerized support enforcement systems in operation by October 1, 2000* [45 CFR 307.11(c)(3)(i) and(ii)]: The compliance date for system enhancements to add Social Security Retirement (SSR) with concurrent Supplemental Security Income (SSI) to prevent garnishment of these funds from the noncustodial parent's financial account will be [INSERT DATE 240 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

I. Statutory Authority

This final rule is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (Act) [42 U.S.C. 1302]. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act. Additionally, the Secretary has authority under section 452(a)(1) of the Act [42 U.S.C. 652(a)(1)], through a designee, to “establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child

support...as [the designee] determines to be necessary to assure that such programs will be effective.” Rules promulgated under section 452(a)(1) must meet two conditions. First, the Secretary’s designee must find that the rule meets one of the statutory objectives of “locating noncustodial parents, establishing paternity, and obtaining child support.” Second, the Secretary’s designee must determine that the rule is necessary to “assure that such programs will be effective.”

Section 454(13) of the Act [42 U.S.C. 654(13)] requires a State plan to “provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan.”

This final rule is published in accordance with the following sections of the Act: section 451 - Appropriation; section 452 - Duties of the Secretary; section 453 - Federal parent locator service; section 453A - State directory of new hires; section 454 - State plan for child and spousal support; section 454A - Automated data processing; section 455 - Payments to States; section 459 - Consent by the United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations; section 460 - Civil actions to enforce support obligations; section 464 - Collection of past-due support from Federal tax refunds; section 466 - Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement; and section 467 - State guidelines for child support awards.

II. Background

This final rule carries out the President’s directives in Executive Orders (E.O.) 13771 and 13777. Executive Order 13777 requires each agency to establish a Regulatory Reform Task Force that shall evaluate existing regulations (as defined in section 4 of E.O. 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. This rule eliminates identified regulatory requirements that are outdated and unnecessary. Additionally, this regulation makes a few technical amendments and needed policy adjustments.

This Technical Corrections final rule addresses several updates we will discuss in Section III, and the three substantive changes mentioned here. First, OCSE is amending the compliance date for *Review and adjustment of child support orders* in § 303.8(b)(7)(ii). The changes addressed in this rule, makes a technical change, that will allow those States that consider incarceration to be voluntary unemployment additional time to comply with the FEM final rule.

Second, on February 9, 2018, the President signed the Bipartisan Budget Act of 2018, Public Law 115-123. Section 53117 of Public Law 115-123, Modernizing child support enforcement fees, amends section 454(6)(B)(ii) of the Social Security Act to increase the annual collection fee from \$25 to \$35 for services provided by the State child support agency to individuals not receiving title IV-A assistance, i.e., Temporary Assistance for Needy Families (TANF). The law also revises the amount from \$500 to \$550 that the State must collect and disburse to the family before imposing the fee each Federal fiscal year. This final rule codifies these statutory requirements.

Finally, to obtain more timely National Directory of New Hires (NDNH) data, the Office of Child Support Enforcement (OCSE) is amending § 303.108(c) to reduce the timeframe to

report wage information to the NDNH from the end of the fourth month following the reporting period to the end of the second month following the reporting period. This is a change from the Notice of Proposed Rulemaking, due to recommendations in comments received on the proposed rule, and is outlined in the response to comments under Section III.

III. Summary Descriptions of the Regulatory Provisions and Response to Comments

The following is a summary of the regulatory provisions included in the final rule and, where appropriate, how these provisions differ from what was initially included in the Notice of Proposed Rulemaking (NPRM). The NPRM was published in the Federal Register on December 18, 2018 (83 FR 64803 through 64807). The regulatory provisions included in this final rule are discussed by section, and includes the rationale when changes from the NPRM were necessary.

OCSE received 43 sets of comments from States, the Department of Labor, workforce agencies, and other interested entities. We posted 30 sets of comments on www.regulations.gov; 11 comments were duplicate responses (when the same commenter submitted the same response more than once or via alternate methods e.g., mail and online), and 2 comments were not posted because they were outside of the scope of the NPRM. The posted comments were from the following groups: 21 State child support agencies, 3 national child support organizations, 5 State workforce agencies, and 1 national workforce agency.

Generally, the comments received on the NPRM were in agreement or support of the proposed changes. However, there were comments that sought further clarification or addressed concerns with the proposed changes. Therefore, in this section, OCSE will discuss those comments seeking clarification or addressing specific concerns. In drafting the final rule, OCSE closely reviewed the comments and made a number of adjustments in response to those comments. Additionally, some provisions did not receive any comment. Immediately following

the Summary Description for each provision, OCSE includes the Response to Comments and provides the rationale for any changes made to the proposed rule.

Section 302.33: Services to individuals not receiving title IV-A assistance.

OCSE proposed to revise 45 CFR 302.33(e) because section 454(6)(B)(ii) of the Social Security Act, on which it is based, was amended by Section 53117 of the Bipartisan Budget Act of 2018, Public Law 115-123, Modernizing Child Support Enforcement Fees. The \$25 annual fee was increased to \$35 by this statutory amendment. In addition, this amendment changed the amount the State must collect and disburse to the family each year before imposing and collecting the annual fee which was changed from \$500 to \$550. OCSE received four comments in support of this provision.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, 45 CFR 302.33(e) is adopted as proposed.

Section 302.51: Distribution of support collections.

This section has been added to the final rule to address a technical correction needed in the regulations in section 45 CFR 302.51(a)(5), regarding the corresponding change made to § 302.33(e) which updates the annual fee from \$25 to \$35 based on the Bipartisan Budget Act of 2018. We are removing “\$25” and replacing it with “\$35” to update the annual fee amount. This change was not proposed in the NPRM and therefore no comments were received.

Section 303.7: Provision of services in intergovernmental IV-D cases.

This section has been added to the final rule to address a technical correction needed in the regulations in section 45 CFR 303.7(f), regarding the corresponding change made to § 302.33(e) which updates the annual fee from \$25 to \$35 based on the Bipartisan Budget Act of 2018. We are removing “\$25” and replacing it with “\$35” to update the annual fee amount. This change was not proposed in the NPRM and therefore no comments were received.

Section 303.11: Case closure criteria.

OCSE proposed to revise 45 CFR 303.11(b)(9)(ii) to allow case closure when the noncustodial parent is also receiving concurrent Supplemental Security Income (SSI) and Social Security Retirement (SSR) benefits. The rationale for closing concurrent SSI/Social Security Disability Income (SSDI) cases applies equally to concurrent SSI/SSR cases because the noncustodial parent meets the low-income means-tested criteria for the SSI program. The concurrent SSI/SSR noncustodial parent receives no more income than a SSI/SSDI recipient. SSDI and SSR benefits are related in that SSR benefits take the place of SSDI when an individual reaches retirement age. Additionally, this provision remains optional, and provides States with the flexibility to close the case when deemed appropriate by the State. OCSE received nine comments in support of this provision. Additionally, OCSE received two comments suggesting that the case closure code be broadened to include other means tested programs and one commenter asked if the case closure criteria is still optional.

Comment: One commenter agreed with the proposed provision, and suggested that OCSE broaden this closure code to include any case where the noncustodial parent’s only source of

income is a means-tested income program equal to or less than if the noncustodial parent qualified for SSI. This commenter stated the rationale would be the same and would not lead to some cases being unable to close due to an unequal treatment of participants.

Response: OCSE understands that there are other income categories that may seem related, however, this case closure provision is specific to noncustodial parents who receive SSI payments.

Comment: One commenter suggested that Social Security Survivor's benefits should be included ahead of including Social Security Retirement and believed this should be added to this criteria.

Response: OCSE disagrees. We are including SSR as a technical correction to this provision because of its close association with SSDI, as described here and under § 307.11. Considering any other benefits at this time is outside the scope of the regulation. As previously stated, a recipient receives concurrent SSI and either SSDI or SSR benefits under title II of the Act when the disabled noncustodial parent qualifies for the means-tested SSI benefits on the basis of his or her income and assets, but also qualifies for the SSDI or SSR benefits. In these cases, the Social Security Administration pays a combination of benefits up to the SSI benefit level. Therefore, a recipient who receives a concurrent SSI/SSDI or SSI/SSR benefit receives no additional money if they transition from a SSDI benefit to a SSR benefit because the recipient reached the appropriate retirement age. As such, only those cases that the State deems appropriate to close under § 303.11(b)(9)(ii) may be considered.

Comment: One commenter asked if this case closure criteria is still optional.

Response: Yes. This case closure criterion remains optional. The IV-D agency should review those cases where the noncustodial parent is a recipient of SSI to determine on a case-by-

case basis if it is appropriate to continue to enforce obligations for child support when other forms of income may be available or to close the case.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, and considering the comments received, OCSE finalizes 45 CFR 303.11(b)(9)(ii) as proposed.

Section 303.71: Requests for full collection services by the Secretary of the Treasury.

OCSE proposed to remove 45 CFR 303.71, “Requests for full collection services by the Secretary of the Treasury.” Due to the low number of cases currently being referred, and the availability of other more effective enforcement procedures, OCSE is removing this provision. States have not submitted any new cases for this enforcement procedure since 2013. Since the inception of this provision, we have made a number of more effective enforcement procedures available to States. Given that States are no longer widely using this enforcement tool, we are streamlining the regulations by removing this provision. However, this provision is statutory, therefore the removal of § 303.71 will not impact a State’s ability to use this procedure, pursuant to section 452(b) of the Act [42 U.S.C. 652(b)], if it so chooses. Five commenters agreed with the provision and two commenters agreed with the provision and requested that OCSE publish guidance.

Comment: Two commenters agreed with the proposed provision, and suggested publication of guidance to clarify when States can use this enforcement action.

Response: States may contact sollections@acf.hhs.gov for guidance if they elect to use this provision.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, and considering the comments received, OCSE removes 45 CFR 303.71 as proposed.

Section 303.73: Applications to use the courts of the United States to enforce court orders.

OCSE proposed to remove 45 CFR 303.73, “Applications to use the courts of the United States to enforce court orders,” because it is no longer necessary. As stated in the NPRM, this provision involves a State seeking to use the Federal courts to enforce a child support order against an absent parent in another State, by applying to the Secretary for permission to use a United States district court for such purpose based on instructions issued by OCSE. This provision, originally promulgated at 45 CFR 302.72 in 1975, was needed to enforce interstate orders. Since then, the “Preventing Sex Trafficking and Strengthening Families Act,” enacted on September 29, 2014 (Pub. L. 113-183), amended section 466(f) of the Social Security Act, 42 U.S.C. 666, requiring all States to enact the 2008 amendments to the Uniform Interstate Family Support Act “officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws” (referred to as UIFSA 2008). UIFSA 2008 makes the requirements in this provision obsolete since it establishes procedures for enforcing interstate orders.

Currently, all States are using UIFSA 2008, which defines a tribunal as a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child. UIFSA also establishes rules/standards related to personal, subject matter, and long-arm jurisdiction, and establishes procedures on registering/enforcing foreign orders. However, OCSE acknowledges that there are still statutory provisions, in sections 452(a)(8) and 460 of the Act, 42 U.S.C. 652(a)(8) and 660 that permit States to apply to the Secretary for permission to use a United States district court, and that Action Transmittal, issued February 6, 1976 (OCSE-AT-76-1) and revised May 12, 1976

(OCSE-AT-76-8), provides guidance for use of Federal courts and instructions to State IV-D agencies for preparation and submission of applications for certification to use a U.S. district court. OCSE received four comments in support of this proposed change.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, OCSE removes 45 CFR 303.73 as proposed.

Section 303.108: Quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires.

Section 453A(g)(2)(B) of the Act, 42 U.S.C. 653a(g)(2), requires that the State Directory of New Hires shall, on a quarterly basis, furnish to the NDNH information concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations. In accordance with 45 CFR 303.108(c), the State must report quarterly wage information no later than the end of the fourth month following the reporting period. However, the State reports quarterly unemployment compensation claim information no later than the end of the first month following the reporting period.

In the NPRM, OCSE proposed to change that provision to reduce the timeframe for reporting quarterly wage data, proposing that States report by the end of the first month following the reporting period. This would align the timeframes for when States must report wage and unemployment compensation claims data to the NDNH and help ensure State child support programs receive data more timely to locate parents and to establish and enforce support orders. However, the timeframe OCSE proposed garnered alternate suggestions from several commenters, including the Department of Labor, national labor organizations, State workforce

agencies, and child support agencies. In addition, OCSE received two comments regarding compliance with implementing the requirement.

Comment: Several commenters expressed that the timeframe proposed by the NPRM does not provide sufficient time for the State to report quarterly wage data to the NDNH, based on the timeframe that employers must report to their States. Commenters stated that most States permit employers to file their wage reports up through the end of the month after a calendar quarter ends. This would mean that those States would need to provide the data to the NDNH on the same deadline. Commenters advised that States provide information that has actually been received and processed into their systems, and they are unable to do so with the same deadline as employers. As an alternative, several commenters suggested moving the deadline to report quarterly wage information to the NDNH to no sooner than the end of the second month after a calendar quarter.

Response: OCSE agrees with the alternative suggestion to change the reporting timeframe from the proposed end of the first month following the reporting period to the end of the second month following the reporting period. This will assist in streamlining the receipt of timely data to the NDNH and help State child support programs receive data to locate parents and to establish and enforce support orders in a more timely manner.

Comment: Some commenters suggested moving the deadline to report quarterly wage information to the NDNH to no sooner than the end of the third month after a calendar quarter.

Response: OCSE understands that, due to varying systems and employer deadlines, more time would be preferable. However, we received feedback from the Department of Labor and a national labor organization. They have provided an alternative to the proposed change in the

NPRM. They suggested moving the deadline to report quarterly wage information to the NDNH to no later than the end of the second month after a calendar quarter, and OCSE agrees.

Comment: One commenter stated that there is concern regarding the significant system changes required to implement this provision, and stated that timely reporting may not always be possible because of potentially conflicting reporting requirements placed on child support agencies, State workforce development agencies, and employers and indicated that it is impossible to know if implementation was possible.

Response: OCSE understands the complexities of implementation. In the final rule, OCSE adopts a timeframe for reporting quarterly wage data to the NDNH different than the timeframe proposed in the NPRM, so that reporting is due by the end of the second month following the reporting period. In addition, States will have one year from the publication date of the final rule to comply with this change. For those States that will be required to change their State law, the compliance date will be the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Comment: One commenter suggested that the compliance date for implementation of the proposed changes to § 303.108 should be delayed, if a State needs to adopt changes in State law.

Response: OCSE agrees and has amended the compliance date from the NPRM. The compliance date of this provision in the final rule is 1 year after the publication of the final rule unless State law revisions are needed, in which case the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, and considering the comments received, OCSE finalizes § 303.108(c) by changing the timeframe for reporting quarterly wage data to the end of the second month following the reporting period, instead of the end of the first month as proposed.

Section 305.65: State cooperation in audit.

This section has been added to the final rule to address a technical correction needed in the regulations in section 45 CFR 305.65(b), regarding definitions of part 305, which are found in § 305.1. We are removing “§ 305.2” and replacing it with “§ 305.1” to correct the section citation. This change was not proposed in the NPRM and therefore no comments were received.

Section 307.11: Functional requirements for computerized support enforcement systems in operation by October 1, 2000.

OCSE proposed several revisions to § 307.11(c)(3) (i) and (ii). The first proposed change was a technical correction to the FEM final rule to include noncustodial parents who receive concurrent Supplemental Security Income (SSI) and Social Security Retirement (SSR) benefits under title II of the Act. In the FEM final rule, § 307.11(c)(3)(i) precludes garnishment of

financial accounts for SSI recipients and concurrent SSI and SSDI recipients. Paragraph (c)(3)(ii) requires the State to make the SSI recipient whole if the State inappropriately garnishes the SSI benefit or concurrent SSI and SSDI benefits from the noncustodial parent's financial account and return these monies within 5 business days after the State becomes aware that the noncustodial parent was inappropriately garnished. In the NPRM for this rule, OCSE proposed amending these provisions to also apply these requirements to concurrent SSI and SSR benefits. As indicated in the NPRM, a disabled noncustodial parent qualifies for the means-tested SSI benefit on the basis of his or her income and assets, but also qualifies for the SSDI or SSR benefits because of employment credits. Individuals eligible to receive SSR may be eligible to receive SSI benefits when their SSR benefit is below SSI income and assets limits. Given that the noncustodial parent is eligible for concurrent benefits, meets the SSI means-tested criteria, and receives the same benefit amount as a SSI beneficiary, the state should not garnish the SSDI or the SSR portion from the noncustodial parent's financial account.

Second, OCSE proposed to amend § 307.11(c)(3)(i) and (ii) by adding “or through an income withholding order” as an additional method of garnishment of funds that would be subject to the requirements in these paragraphs, in addition to garnishment of funds from the noncustodial parent's financial account. OCSE received several comments regarding the proposed changes to § 307.11(c)(3)(i) and (ii). Most did not approve or agree with the proposed changes. However, OCSE also received comments that were in favor of the proposed changes. As stated in the FEM Final Rule, OCSE emphasizes that it makes no changes to its policy regarding recipients of title II benefits being subject to garnishment, as outlined in section 459(h)(1)(A)(ii)(I) of the Act, 42 U.S.C. 659(h)(1)(A)(ii)(I). When a recipient receives title II benefits only, those benefits are subject to garnishment, as can be found in Dear Colleague

Letters (DCL), and Policy Interpretation Questions (PIQ) (DCL-13-06; PIQ-09-01; DCL-00-103). Title II benefits, such as SSDI and SSR benefits, are considered remuneration from employment, and therefore, State or Tribal child support agencies are allowed to continue to garnish the benefits of child support directly from the Federal payor as authorized under section 459(h) of the Act. States can request Title II and Title XVI information through the State Verification and Exchange System (SVES) when they submit a locate request through their statewide system or the Child Support Portal.

Comment: Two commenters mentioned that the 5 days to return the funds received via income withholding, already sent to families is problematic.

Response: OCSE understands the concern regarding the timeframe by which funds must be returned, and it has made some adjustments in the final rule. The FEM final rule currently requires the State to refund any funds improperly garnished within 5 business days after the agency determines that SSI payments or concurrent SSI payments and SSDI benefits were incorrectly garnished from the noncustodial parent's financial account. This Technical Corrections final rule, amends paragraphs (c)(3)(i) and (ii) to include concurrent SSI and SSR recipients, but the number of days remains unchanged. In this final rule, OCSE adds a new optional component under paragraph (c)(3)(iii), which outlines that the State should return funds improperly garnished from an income withholding order in accordance with § 303.100(a)(8).

Comment: Three commenters requested that we not make the return of concurrent SSI and SSDI or SSR retroactive.

Response: This policy applies once the regulation is in effect and states have until [INSERT DATE 240 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be compliant with § 307.11(c)(3)(i) and (ii). There is no requirement that the

policy be applied retroactively. States will need to return funds improperly garnished from financial accounts within 5 business days after determining the payments were incorrectly garnished. However, if those funds were from an income withholding order, the State should return funds improperly garnished in accordance with § 303.100(a)(8) for States adopting § 307.11(c)(3)(iii).

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, and considering the comments received, OCSE finalizes the proposed revision to § 307.11(c)(3) with changes. OCSE amends paragraphs (c)(3)(i) and (ii) to include concurrent SSI and SSR recipients, however, the income withholding provision that was proposed has been modified in this final rule. Instead, OCSE adds, in the final rule, a new paragraph (c)(3)(iii) to include an optional component for States regarding noncustodial parents who receive concurrent SSI payments and either SSDI or SSR benefits under title II of the Act. For those noncustodial parents who are beneficiaries of SSI and concurrent SSDI or SSR, the State has the option to prevent garnishment of the concurrent SSI and SSDI or SSR payment through an income withholding order, and return funds incorrectly withheld in accordance with 45 CFR 303.100(a)(8) when deemed appropriate by the State. This optional provision will give States flexibility regarding concurrent SSI and SSDI or SSR benefits in cases involving noncustodial parents living at or below the subsistence level.

Section 307.30: Federal financial participation at the 90 percent rate for statewide computerized support enforcement systems.

OCSE proposed removing § 307.30 because this section is outdated. OCSE no longer has the authority to provide enhanced Federal financial participation (FFP) funding at the 90

percent rate for statewide computerized support enforcement systems. The 90 percent enhanced funding was only available for expenditures for the planning, design, development, installation, or enhancement of a statewide computerized support enforcement system during the Federal fiscal years 1996 and 1997. OCSE received three comments in support of the proposed removal.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, OCSE removes 45 CFR 307.30 as proposed.

Section 307.31: Federal financial participation at the 80 percent rate for computerized support enforcement systems.

OCSE proposed removing § 307.31 because this section is outdated. OCSE no longer has the authority to provide enhanced FFP funding at the 80 percent rate for statewide computerized support enforcement systems. The 80 percent enhanced funding was only available for expenditures for the planning, design, development, installation, or enhancement of a statewide computerized support enforcement system until September 30, 2001. OCSE received two comments in support of the proposed removal.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, OCSE removes 45 CFR 307.31 as proposed.

Section 309.20: Who submits a Tribal IV-D program application and where?

OCSE proposed revising § 309.20(b) to remove an outdated address and add “Federal Office of Child Support Enforcement”. OCSE did not receive any comments on this provision.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, OCSE removes 45 CFR 309.20 as proposed.

Section 309.75: What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

An Interim Final Rule effective December 26, 2014 (79 FR 75871), issued jointly by the Office of Management and Budget (OMB), HHS, and a number of Federal agencies, implements “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards” (UAR). OCSE proposed revising the reference regarding OMB Circular A-133, which was superseded by the UAR effective December 26, 2014 (79 FR 75871), to the updated reference 45 CFR part 75, Subpart F. OCSE did not receive any comments on this provision.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, OCSE revises 45 CFR 309.75 as proposed.

Section 309.155: What uses of Tribal IV-D program funds are not allowable?

OCSE proposed revising the reference in § 309.155(g) regarding OMB Circular A-87, which was superseded by the UAR effective December 26, 2014 (79 FR 75871) to the updated reference 45 CFR part 75, Subpart E. OCSE did not receive any comments on this provision.

Summary of Regulatory Changes: For the reasons described in the proposed rule and above, OCSE revises 45 CFR 309.155 as proposed.

Section 309.170: What statistical and narrative reporting requirements apply to Tribal IV-D programs?

This section has been added to address a technical change needed in the regulations in § 309.170(a), regarding the OCSE-34 form and an update to the reporting timeframe. The form

was previously designated as OCSE-34A, however it is now OCSE-34 and the reporting period for the first three quarters of the funding period has changed from 30 days to 45 days. This change was not proposed in the NPRM and therefore no comments were received.

Summary of Regulatory Changes: For the reasons described above, OCSE finalizes the technical change to 45 CFR 309.170(a) by replacing “OCSE-34A” with “OCSE-34,” and changing “30 days” to “45 days.”

IV. Regulatory Review

Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA. All Departments are required by the PRA to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. For this final rule, States will need to resubmit the State plan preprint page 3.8-3, which is a PRA collection activity already covered under OMB Control number 0970-0017 as part of the “State Plan for Child Support Collection and Establishment of Paternity Under Title IV-D of the Social Security Act.” This final rule imposes no additional information collection requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d); as a result, no new PRA approval needs to be sought or obtained.

There is one amended and one new optional provision as a result of these regulations, which are one-time enhancements to statewide child support systems. The description and total estimated burden for the changes are described in the chart below.

Section and Purpose	Instrument	Number of Respondents: 54	Average Burden Hours per Response	Total Cost	National Federal Share	National State Share
Added requirement under § 307.11(c)(3)(i) and (ii) to include Social Security Retirement (SSR) as part of the automated procedure to identify the recipient of Supplemental Security Income (SSI)	Systems Modification	One time system enhancement	100 hours x \$100 x 54 States	\$540,000	\$356,400	\$183,600
Added optional requirement under § 307.11(c)(3)(iii) to prevent garnishing through an income withholding order related to SSI or to return incorrectly garnished funds	Systems Modification	One time system enhancement	100 hours x \$100 x 27 States	\$270,000	\$178,200	\$91,800
		Totals:	8,100 hours	\$810,000	\$534,600	\$275,400

The systems enhancements above will add SSR to existing State systems functional requirements under §307.11(c)(3)(i) and (ii) and, optionally, under § 307.11(c)(3)(iii). For the optional enhancement, we estimate half of the States, or approximately 27, will opt to implement. OCSE has not included a burden estimate in this rule to update the amount and collection threshold for the annual fee under § 302.33(e) because most States have already enacted this statutory change, since it was promulgated February 2018.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OMB has determined that this rule is a significant regulatory action under E.O. 12866. This rule has been reviewed by OMB.

While there are some costs associated with these regulations, they are not economically significant as defined under E.O. 12866. One economic impact of the final rule is associated with the change in the annual fee from \$25 to \$35 under 45 CFR 302.33(e). Based on data collected on the OCSE-34 Child Support Enforcement Program Quarterly Collection Report, OCSE estimates the impact of this change to be approximately \$17 million, which represents a transfer from States and parents to the Federal Government. An area with associated Federal costs is modifying the child support statewide automated system for one-time system enhancements to accommodate amended and optional criteria to identify noncustodial parents

receiving SSI and concurrent SSR. The following estimates were derived from our table in section IV under Paperwork Reduction Act. The total cost for the required systems enhancement is estimated at \$540,000 and for the optional systems enhancement is \$270,000. These costs are to modify statewide IV-D systems for the States at a cost of \$100 an hour (with an assumption that 27 States will implement the optional provision). The total net cost to modify statewide systems in the final rule is \$810,000, and the total Federal costs is \$534,600. This rule is not subject to the requirements of EO 13771 because this rule results in no more than de minimis costs.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before promulgating any rule that may result in an annual expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That threshold level is currently approximately \$154 million. This rule does not impose any mandates on State, local, or Tribal governments, or the private sector that will result in an annual expenditure of \$154 million or more.

Congressional Review

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule' as defined by 5 U.S.C. 804(2).

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation makes technical changes in the child support regulations. This regulation will not have an adverse impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order.

List of Subjects

45 CFR Part 302

Child support, State Plan Requirements.

45 CFR Part 303

Child support, Standards for program operations.

45 CFR Part 305

Child support, Program performance measures, Standards, Financial incentives, and Penalties.

45 CFR Part 307

Child support, Computerized support enforcement systems.

45 CFR Part 309

Child support, Tribal child support enforcement (IV-D) program.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated: May 29, 2020.

Lynn A. Johnson,
Assistant Secretary
for Children and Families.

Approved: May 29, 2020.

Alex M. Azar II,
Secretary.

For the reasons discussed above, the Department of Health and Human Services amends 45 CFR chapter III as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 continues to read as follows:

AUTHORITY: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 302.33 [Amended]

2. Amend § 302.33 by:

- a. Removing “Annual \$25 fee” and adding in its place “Annual collection fee” in the paragraph (e) subject heading;
- b. Removing the dollar amount “\$25” and adding in its place “\$35” wherever it appears in paragraphs (e)(1) introductory text and (e)(2), (4), and (5); and
- c. Removing the dollar amount “\$500” and adding in its place “\$550” in paragraphs (e)(1)(i) and (e)(3) introductory text.

§ 302.51 [Amended]

3. Amend § 302.51 in paragraphs (a)(5)(i) and (ii) by removing the dollar amount “\$25” and adding in its place “\$35” wherever it appears.

PART 303--STANDARDS FOR PROGRAM OPERATIONS

4. The authority citation for part 303 continues to read as follows:

AUTHORITY: 42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k), and 25 U.S.C. 1603(12) and 1621e.

§ 303.7 [Amended]

5. Amend § 303.7 in paragraph (f) by removing the dollar amount “\$25” and adding in its place “\$35” wherever it appears.
6. Amend § 303.11 by revising paragraph (b)(9)(ii) to read as follows:

§ 303.11 Case closure criteria.

* * * * *

(b) * * *

(9) * * *

(ii) Both SSI payments and either Social Security Disability Insurance (SSDI) or Social Security Retirement (SSR) benefits under title II of the Act.

* * * * *

§ 303.71 [Removed]

7. Remove § 303.71.

§ 303.73 [Removed]

8. Remove § 303.73.

9. Amend § 303.108 by revising the subject heading and the first sentence in paragraph (c) to read as follows:

§ 303.108 Quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires

* * * * *

(c) *What timeframes apply for reporting quarterly wage and unemployment compensation claims data?* The State shall report wage information for the reporting period no later than the end of the second month following the reporting period. ***

* * * * *

PART 305--PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

10. The authority citation for part 305 continues to read as follows:

AUTHORITY: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658a, and 1302.

§ 305.65 [Amended]

11. Amend § 305.65 by removing “§ 305.2” and adding in its place “§ 305.1” in paragraph (b).

PART 307--COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

12. The authority citation for part 307 continues to read as follows:

AUTHORITY: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

13. Amend § 307.11 by revising paragraphs (c)(3)(i) and (ii), and adding paragraph (c)(3)(iii) as follows:

§ 307.11 Functional requirements for computerized support enforcement systems in operation by October 1, 2000.

* * * * *

(c) * * *

(3) * * *

(i) Identify cases which have been previously identified as involving a noncustodial parent who is a recipient of Supplemental Security Income (SSI) payments or concurrent SSI payments and Social Security Disability Insurance (SSDI) or Social Security Retirement (SSR) benefits under title II of the Act, to prevent garnishment of these funds from the noncustodial parent's financial account; and

(ii) Return funds to a noncustodial parent, within 5 business days after the agency determines that SSI payments or concurrent SSI payments and SSDI or SSR benefits under title II of the Act, in the noncustodial parent's financial account have been incorrectly garnished.

(iii) At the option of the State, identify cases involving a noncustodial parent who is a recipient of concurrent SSI payments and either SSDI or SSR benefits under title II of the Act and prevent garnishment of these funds from the noncustodial parent through an income withholding order; and return funds to a noncustodial parent in accordance with § 303.100(a)(8), after the agency determines that concurrent SSI payments and either SSDI or SSR benefits have been incorrectly garnished from the noncustodial parent through an income withholding order.

* * * * *

§ 307.30 [Removed]

14. Remove § 307.30.

§ 307.31 [Removed]

15. Remove § 307.31.

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

16. The authority citation for part 309 continues to read as follows:

AUTHORITY: 42 U.S.C. 655(f) and 1302.

§ 309.20 [Amended]

17. Amend § 309.20 in paragraph (b) by removing the words “Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW., Washington, DC 20447” and adding in their place the words “Federal Office of Child Support Enforcement”.

§ 309.75 [Amended]

18. Amend § 309.75 in paragraph (d) by removing the words “OMB Circular A-133” and adding in their place the words “45 CFR part 75, subpart F”.

§ 309.155 [Amended]

19. Amend § 309.155 in paragraph (g) by removing the words “OMB Circular A-87” and adding in their place the words “45 CFR part 75, subpart E”.

§ 309.170 [Amended]

20. Amend § 309.170 in paragraph (a) by removing the words “OCSE-34A” and adding in their place the words “OCSE-34”, and by removing “30” and adding in its place “45”.

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